

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.
CIVIL APPLICATION NO.595 OF 2004
IN
WRIT PETITION NO.4323 OF 1998

1. Mrs Siloo Kavarana and ors. .. Petitioners

Vs

1. Vaspi Bomi Gandevia
and ors. .. Respondents.

Mr A.K.Abhyankar, senior counsel, for the petitioners.
Mr S.S.Deshmukh h/f Mr R.A.Thorat, for respondent no.1.

CORAM : D.B.BHOSALE, J.
DATE : 09.11.2006

PC:

1. Heard Mr Abhyankar, learned senior counsel for the petitioners.

2. Mr Deshmukh, learned counsel, holding for Mr Thorat, learned Advocate for respondent no.1, submits that though the Vakalatnama of Mr Thorat for respondent no.1 continues, they have no instructions in the matter since respondent no.1 has taken away all the papers from Mr Thorat. This petition has appeared on board from time to time. In view thereof, I heard Mr Abhyankar, learned senior counsel, for the petitioners.

3. The petitioners have made the following prayer in the application:

(a) that this Honourable Court be pleased to direct the Court Receiver to handover the possession of the suit premises to the petitioners, till the final disposal of the above writ petition.

4. It appears that the suit premises is lying locked since almost 15 years. The petitioners are the trustees of Parsi Panchayat Funds and Properties and also the Trustees of N.N.& R.N. Wadia Trust Buildings for Parsees. It further appears that Registrar of the Small Causes Court was appointed as Court Receiver and when the suit was dismissed, the then Registrar Mr.H.S.Jadhav of the Small Causes Court was directed to hand over possession of the suit flat No.A/23, Cusrow Baug to the original defendants, i.e. the petitioners herein. The matter was carried in appeal and in appeal the Judgment and Order of the trial court dismissing the suit was set aside and the suit was decreed, which is being challenged in the present petition. While issuing the rule on 3.9.1998, it was clarified that the Court Receiver will continue to remain in possession of the premises. Since last above 15 years the premises is lying locked, hence the petitioners have filed the present application. The petitioners have also placed on record a joint affidavit dated 7.11.2006 of Keki Dhunjishaw Udwardia, one of the trustees and the General

Power of Attorney Holder of the petitioner nos. 1,2, and 4 to 7 and of Dinshaw Rusi Mehta, petitioner no.3, in the application giving undertakings in paragraph nos. 5 to 9 thereof, which read thus :

5. As the suit premises is gathering dust and lying locked since almost 15 years the Petitioners have presented the aforesaid Civil Application to appoint the Petitioners landlords to be put in possession of the suit premises as agents of the Receiver Mr.H.S.Jadhav, the Retired Registrar of the small Causes Court, on an undertaking to the Hon'ble Court without security or royalty but on payment of Receiver's charges from the date we are put in possession in the following terms :-

6. We, Mr.Keki Dhunjishaw Udwadia, the Secretary and the Constituted Attorney of the Petitioners 1,2,3,4,6 and 7 and Mr.Dinshaw Rusi Mehta, the Petitioner Trustees No. 3 as hereinabove, do hereby solemnly undertake to the Hon'ble Court that while we, being given possession of the suit premises, i.e. Flat No.A/23 Cusrow Baug, as agents of the Court Receiver Mr.H.S.Jadhav, the then Registrar of the Small Causes Court, we will handover possession of the said suit premises in the event of the Writ Petition being dismissed as per the orders and directions of this Hon'ble Court within such time as per the directions of this Hon'ble Court.

7. We, further, declare that we will allot the suit premises to a deserving person only for a temporary period pending the hearing and final disposal of the Writ Petition and only upon the Allottee giving a separate undertaking to this Hon'ble Court that he will not claim any right to the suit flat and to

hand over the possession of the suit flat as per this Hon'ble Court's directions at the disposal of this Writ Petition, before we put the Allottee in possession of the suit flat.

8. We also undertake to bear the cost of the Court Receiver, if any, from the date of being put in possession of the suit flat as agent of the said Receiver.

9. We further agree and undertake to abide by such further and other orders of this Hon'ble Court and as agents of the Court Receiver pending the hearing and final disposal of the Writ Petition."

I perused the application as also the contents of the affidavit dated 7.11.2006 and I am satisfied that no prejudice whatsoever would be caused to the respondents if the prayer (a) in the civil application is allowed. Hence, the following order:

(a) The civil application is allowed in terms of prayer clause (a), subject to the petitioners abiding and filing further undertaking, as stated in the affidavit dated 7.11.2006 and in particular abide by the statements made in paragraph 7 of the affidavit. The undertakings given by the petitioners in the affidavit dated 7.11.2006 are accepted.

(b) Since Mr H.S.Jadhav, the then Registrar of the Small Causes court has retired, the Registrar of the Small

Causes Court is directed to take formal possession from Mr H.S.Jadhav and act as receiver in respect of the suit premises till the disposal of the writ petition. The petitioners shall act as agents of the receiver and shall bear all expenses of the receiver without royalty and security. The order dated 3.9.1998 insofar as the interim relief is concerned, stands modified in the aforesaid terms.

(c) The civil application is disposed of.

(D.B.BHOSALE, J.)